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No. 91-781

Supreme Court, U.S.  
FILED

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In The  
Supreme Court of the United States  
October Term, 1991

UNITED STATES OF AMERICA,

*Petitioner,*

v.

A PARCEL OF LAND, BUILDINGS,  
APPURTENANCES AND IMPROVEMENTS  
KNOWN AS 92 BUENA VISTA AVENUE, RUMSON,  
NEW JERSEY, AND BETH ANN GOODWIN,

*Respondents.*

On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Third Circuit

BRIEF FOR THE RESPONDENT,  
BETH ANN GOODWIN

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## RESTATEMENT OF THE QUESTION PRESENTED

Whether a statute which provides protection from quasi-criminal forfeitures to "innocent owners" should be construed instead only to provide protection to bona fide purchasers?

The Court has requested that we file a response to the government's petition for certiorari on the innocent owner issue. For the reasons that follow and as set forth in our Reply Memorandum filed simultaneously with this brief, the Court should summarily affirm the decision below on the innocent owner issue and grant review of the Questions Presented in our cross-petition for certiorari (No. 91-1052).

As the government would have it, the innocent owner defense is only available to a person who is a bona fide purchaser for value. But the plain language of 21 U.S.C. 881(a)(6) shows that protection from civil forfeiture is provided to all innocent owners and not merely to innocent owners who are bona fide purchasers for value. Thus, the statute does not limit protection from forfeiture to bona fide purchasers for value.

Congress expressed its intention through unequivocal language when it intended that relief from forfeitures should only be available to "bona fide purchasers." See 18 U.S.C. 2963(c) and 12 U.S.C. 853(c). That language was not utilized in 21 U.S.C. 881(a)(6) but rather Congress used the broader language offering protection to all "innocent owners." As the Third Circuit properly noted, the decisions cited by the government which appear to limit protection provided by that section to bona fide purchasers are contrary to the plain statutory language. (App. 8a-9a).

The legislative history pertinent to this statutory provision confirms that Congress intended to exempt all subsequent innocent owners from forfeiture under 21

U.S.C. 881 and not just bona fide purchasers for value. As the Congressional Record specifically indicates:

Finally, it should be pointed out that no property would be forfeited . . . to the extent of the interest of any innocent owner of such property. The term "owner" should be broadly interpreted to include any person with a recognizable legal or equitable interest in the property seized. *Specifically, the property would not be subject to forfeiture unless the owner of such property knew or consented to the fact that:*

- 1) the property was furnished or intended to be furnished in exchange for a controlled substance in violation of law,
- 2) *the property was proceeds traceable to such an illegal exchange, or*
- 3) the property was used or intended to be used to facilitate any violation of Federal illicit drug laws. (emphasis added)

1978 U.S. Code Cong. & Admin. News at 9522-23.

Senators Culver and Nunn spoke on the floor of the Senate regarding the innocent owner provision. Senator Culver explained that the innocent owner provision was added as a result of "concerns" expressed by members of the Juvenile Delinquency Subcommittee:

Specifically, it was noted that the original language could have been construed to reach properties traceable to the illegal proceeds but obtained by an innocent party without knowledge of the manner in which the proceeds were obtained. The original language is modified in the proposed amendments in order to protect

the individual who obtains ownership of proceeds with no knowledge of the illegal transaction. (Cong. Rec. S.23056 (July 27, 1978)) (emphasis supplied).

Senator Nunn stated that the innocent owner provision was added:

. . . to make it clear that a bona fide party who has no knowledge or consent to the property he owns having been derived from an illegal transaction, that party would be able to establish that fact under this amendment and forfeiture would not occur.

That is the purpose of the wording added to the modification in addition to some other wording in the modification making the amendment broader than it otherwise would have been. (Cong. Rec. S.23057 (July 27, 1988)) (emphasis supplied).

We believe that this Court should apply the doctrine set forth in *United States v. Coin and Currency*, 401 U.S. 715 (1971) where this Court stated:

When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise.

401 U.S. 721-22.

The government suggests that the federal criminal case against Brenna will operate to deprive Goodwin of her home and that this possibility creates an anomaly caused by the Third Circuit decision. (Gov't. petition at p.21 n.10). No such anomaly exists. Goodwin has title to the property and has possessed it for a decade. The

government can only forfeit Brenna's interest in the property in his criminal case and Brenna has never owned the property. Surely the government does not contend it can deprive Goodwin of her home in a criminal case to which she is not a party and has never been charged.

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### CONCLUSION

For the reasons stated, the Court should summarily affirm the decision below on the innocent owner issue and grant our cross-petition for certiorari (No. 91-1052).

Respectfully submitted,

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